

## MINUTES

### INTERGOVERNMENTAL RELATIONS COMMITTEE

October 26, 2011

A meeting of the Intergovernmental Relations Committee of the Council of the County of Kauai, State of Hawaii, was called to order by Councilmember KipuKai Kualii, Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Lihue, Kauai, Hawaii 96766, on Wednesday October 26, 2011, at 3:21 p.m., after which the following members answered the call of the roll:

Honorable Tim Bynum  
Honorable Dickie Chang  
Honorable Nadine K. Nakamura  
Honorable Mel Rapozo  
Honorable KipuKai Kualii, Chair  
Honorable Jay Furfaro, Ex-Officio Member  
Honorable JoAnn A. Yukimura, Ex-Officio Member

IGR 2011-02      Communication (10/14/2011) from Council Vice Chair Yukimura, requesting agenda time to propose amendments to Chapter 196, Hawaii Revised Statutes, Relating to Energy Resources (Act 204, SLH 2008) for inclusion in the 2012 Kauai County Legislative Package.  
[This item was deferred.]

Mr. Kualii:      Before I call on Councilmember Yukimura, I want to say that I've sent correspondence to all Councilmembers and to the Administration regarding submission of proposals for the 2012 Kauai County Legislative Package. The deadline is Friday November 4, and we will be discussing all proposals submitted by the Administration and Councilmembers on Wednesday at our Council Meeting on November 16. So Councilmember Yukimura at this time has asked for our support to consider this proposed amendment regarding the Energy Resources Act 204 which we've discussed before regarding aligning the law with the intent and I'll let Councilmember Yukimura take it from there.

Ms. Yukimura:      Thank you Mr. Chair. In considering the previous request I had which was to eliminate the variance for a gas, where there was a gas on demand heater proposed for new construction of single family or duplex housing, we rejected that but there was a, in our discussions there was some real discussion about how the ultimate end owner or the buyer should be the one who makes the decision about whether or not to go solar or to apply for a variance. There was evidence showing that the intent of the Legislature was such that there was an intention that the ultimate end owner be the only one to be able to ask for a variance – the gas variance. That's quoted in the law in my letter but it's taken from Act 155 which is the Clean Energy Initiative, that was the omnibus Bill that launched the State's energy efforts. And so there was discussion and I think even the Chair said maybe we could look at that. I'm putting this in front of the Committee now for consideration because it's very clear from the intention expressed in Act 155 that the desire of the Legislature was to allow for this fourth variance which is the gas on demand variance, that it only be allowed if the end owner applied for it. I'm proposing that we make this part of our County Legislative Package, I'd like to have some discussion today but ask that it be deferred to the

discussion set by the Chair for discussion about our Legislative Package, I think it's December 16?

Mr. Kuali'i: November 16.

Ms. Yukimura: November 16? But I wanted to have some discussion. I did speak with PUC Chair and former Representative Mina Morita about this and I think Councilmember Nakamura did speak to her too, and she was very clear that the intention was that only the end owner would be making the request. I think even Mr. Imperato who opposed removing the variance did also make that point about the end owner being the one to ask for it. So I put this on the table and I'd be happy to answer any questions to the extent that I can.

Mr. Kuali'i: Councilmember Rapozo.

Mr. Rapozo: I have a question. Your proposal is that the stated intention and the text of the State Law be incorporated into the enforcement policies so that in fact only the end user can request for the variance?

Ms. Yukimura: Exactly.

Mr. Rapozo: Okay.

Mr. Kuali'i: Other Councilmembers? Councilmember Bynum.

Mr. Bynum: I'll just be brief, we had this discussion before and the proposal was to eliminate the variance. It was very clear to me from reading it that the legislative intent hadn't been followed because it says right there – the intent is this. So I'm in full support of this, I think in essence it's preserving choice. The choice was supposed to be for the consumer and when a developer or rental unit person uses this variance contrary to the intent, it takes away the choice of the consumer which was the whole point of this. I think this is much more, a better alignment about and how to proceed to deal with this problem. Remember, the reality is 50% of the homes built on Kaua'i have had variances and that's huge compared to some of the other islands. It's very much in our best interest to get the Legislature to just follow through with their initial intent.

Mr. Kuali'i: Councilmember Rapozo.

Mr. Rapozo: Thank you, and I agree with you. I think in the earlier bill today I mentioned the purpose of the other Legislation where you have a conflicting purpose with the bill and that's exactly what's occurring in this bill. I did vote against the removal of the variance because I didn't believe, I think that was going too far. This one I will support, simply because it brings the intent, the Legislative intent into the bill or the ordinance or the act. I think it's a very reasonable proposal that I will support when it gets to November 16.

Ms. Yukimura: Thank you.

Mr. Kuali'i: Councilmembers? Councilmember Nakamura.

Ms. Nakamura: I have a copy of the form that DBEDT uses to, when someone wants to request a variance from the solar water heating bill statute. The way this form, and this is a form that DBEDT created and on the form it gives a, it has to be submitted by a licensed professional, must be on a architect or mechanical engineer's letterhead, there must be a professional stamp, and on it there are three justifications for the variance. Nowhere on this form does it say that "I spoke with the resident and the resident has chosen this variance but it was the client's request." There's no place for a client's signature. So I think the intent is clear in the bill but the way DBEDT is implementing the law is it could be "beefed" up. I think there are flaws in this tool that is used that could easily, without changing the law, include the intent of the Legislature.

Ms. Yukimura: May I answer?

Mr. Kualifi: Yes.

Ms. Yukimura: Actually I believe the three variances there require calculations of life cycle costing. Is the gas variance also included there?

Ms. Nakamura: Yes, all three sources of variance...

Ms. Yukimura: Because there's four variances allowed under the law.

Ms. Nakamura: Okay.

Ms. Yukimura: The top three require calculations and actually meritorious, it requires the showing of merits between life cycle costs or that there is a technology that's equivalent to a solar water heater. The last one doesn't require any kind of calculation, it just says – if you have a gas heater. That is the one that the Legislature said should be made only by the end consumer. But the way the law is actually written, that is not stated in the law. So in speaking with DBEDT, they didn't feel that they had the authority to require the end owner's signature or reject an application if it didn't have an end owner, so they would actually like this clarification in the law and will alter their forms accordingly if the law can support that. One of the things I will do before the next time we consider this is to get a letter from DBEDT saying that.

Ms. Nakamura: That would be great I think. The other thing that should be considered as you prepare your legislation is looking at talking to developers; Developers of large subdivisions that must make decisions up front about certain, about the design of the building of each home. Sometimes it may not be practical for the end user to be making that decision. When you're designing a building, when you're putting in gas lines, so I'm just asking that you consider it, that point of view in your deliberation.

Ms. Yukimura: Well in fact according to former Representative Morita, there will come situations like that. It's in the developer's interest, where they'll never know who the end owner is if they're building spec houses or subdivisions, and in that case she said – the intention was that the default would be a solar water heater. That would be the most beneficial to the end owner. I'm hoping to get something in writing from her saying that too. We have been in touch with the architects but I haven't been able to really meet with them, I

know you had suggested that back and I hope before now and November 16 we'll be able to get some input from them too.

Ms. Nakamura: And I have been in touch with the former President of the Architects Association of Kaua'i and has initiated conversations and they are interested in dialoguing more.

Ms. Yukimura: Okay.

Mr. Kualii: Any other Councilmembers? Councilmember Bynum.

Mr. Bynum: Just to say that when I read the law closely that's where I went to DBEDT and said – what's the problem? It seems so clear and they said the things JoAnn said, they said it wasn't clear to them, they'd asked for Attorney General opinions, they hadn't gotten that and they didn't feel like they had that authority. It maybe could be resolved administratively but in the meantime, 50% of the projects on Kaua'i are exempting and that's not happening on O'ahu where they do have developers who do big tract homes. They seem to on O'ahu just accepted it – this is the law, we're going to put this in. The way we helped to impact it I think is this way, we can't instruct the Attorney General to give an opinion or even request it, or maybe we could I don't know. Administratively it hasn't worked out. DBEDT would like to apply the laws intended but they don't feel like they don't have the authority now is what I heard from that.

Mr. Kualii: Councilmember Yukimura.

Ms. Yukimura: Yes I think it's pretty clear that the authority is not there. Even if people argue that it is, clarifying it so that there's no question would be a useful thing. On O'ahu I think right now, many of the tract houses are military development and the military is completely committed to energy self sufficiency, they have amazing targets. And then there's other developers on O'ahu that seem to know that it actually increases the value of homes to have solar water heaters because the operating cost of the home is lower. There seems to be acceptances as Councilmember Bynum said. The main thing we would do here to clarifying the law would be to support the outcome that was intended by the Legislature, but still leaving choice available.

Mr. Kualii: Any other Councilmembers? Okay so it sounds like your concept of principal has our support and we'll look for you to draft the bill if I could get a motion to refer this item to the Council Meeting of November 16.

Mr. Rapozo: Is it a Committee Meeting?

Mr. Kualii: It's a Council Meeting.

Ms. Yukimura: Are you going take, may I?

Mr. Kualii: Yes.

Ms. Yukimura: Are you going to work on any of the bills in Committee a week from now?

Mr. Kuali'i:  
that want you want to do?

I guess that would be the week before yes. Is

Ms. Yukimura:

I think so just to give us time to...

Mr. Kuali'i:  
then if it's two weeks.

November 9, so that's just a motion to defer

Mr. Rapozo:

Defer to that date, date specific.

Ms. Yukimura:

It'll still be the same.

Mr. Kuali'i:

It's two weeks from today.

Mr. Rapozo:

That soon?

Mr. Kuali'i:

We're at the end of October.

Mr. Rapozo:

No we're not.

Mr. Kuali'i:

Yes we are. So can I have a motion to defer?

Upon motion duly made by Councilmember Chang, seconded by Councilmember Rapozo, and unanimously carried, communication IGR 2011-02 was deferred.

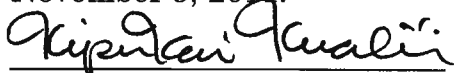
There being no further business, the meeting was adjourned at 3:37 p.m.

Respectfully submitted,



Ihilani C.J. Laureta  
Secretary

APPROVED at the Intergovernmental Relations Committee Meeting on  
November 9, 2011:



KIPUKAI KUALII  
CHAIR, INTERGOVERNMENTAL RELATIONS COMMITTEE

